

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

JUAN M. MONTENEGRO,
Petitioner,
v.
J. SULLIVAN,
Respondent.

No. 1:20-cv-00684-NONE-EPG-HC

ORDER ADOPTING FINDINGS AND
RECOMMENDATIONS, DISMISSING
PETITION FOR WRIT OF HABEAS
CORPUS, AND DECLINING TO ISSUE A
CERTIFICATE OF APPEALABILITY

(Doc. No. 5)

Petitioner is a state prisoner proceeding *pro se* with a petition for writ of habeas corpus pursuant to 28 U.S.C. § 2254. Given that petitioner did not challenge any aspect of his underlying criminal conviction or sentence or the fact or duration of his confinement, but rather sought relief related to the quality of health care he allegedly has received while incarcerated, the assigned magistrate judge issued findings and recommendations on June 2, 2020, recommending that the petition be dismissed without prejudice to petitioner's filing of a civil rights action under 42 U.S.C. § 1983, (Doc. No. 5.) The findings and recommendations were served on petitioner and contained notice that any objections were to be filed within thirty (30) days of the date of service. To date, petitioner has filed no objections, and the time for doing so has passed.¹

¹ The court notes that, on June 15, 2020, petitioner did file a prisoner civil rights complaint. (*See Montenegro v. Sullivan*, 1:20-cv-00847-EPG, Doc. No. 1.)

1 In accordance with the provisions of 28 U.S.C. § 636(b)(1)(C), the court has conducted a
2 *de novo* review of the case. Having carefully reviewed the entire file, the court holds the findings
3 and recommendations to be supported by the record and proper analysis.

4 Having found that petitioner is not entitled to habeas relief, the court now turns to whether
5 a certificate of appealability should issue. A petitioner seeking a writ of habeas corpus has no
6 absolute entitlement to appeal a district court's denial of his petition, and an appeal is only
7 allowed in certain circumstances. *Miller-El v. Cockrell*, 537 U.S. 322, 335-36 (2003); 28 U.S.C.
8 § 2253. The court should issue a certificate of appealability if "reasonable jurists could debate
9 whether (or, for that matter, agree that) the petition should have been resolved in a different
10 manner or that the issues presented were 'adequate to deserve encouragement to proceed
11 further.'" *Slack v. McDaniel*, 529 U.S. 473, 484 (2000) (quoting *Barefoot v. Estelle*, 463 U.S.
12 880, 893 & n.4 (1983)).

13 In the present case, the court finds that reasonable jurists would not find the court's
14 determination that the petition should be dismissed debatable or wrong, or that petitioner should
15 be allowed to proceed further. Therefore, the court declines to issue a certificate of appealability.

16 Accordingly:

- 17 1. The findings and recommendations issued on June 2, 2020 (Doc. No. 5) are adopted;
- 18 2. The petition for writ of habeas corpus is dismissed;
- 19 3. The Clerk of Court is directed to assign a district judge to this case for the purpose of
20 closing the case and then to close the case; and
- 21 4. The court declines to issue a certificate of appealability.

22 IT IS SO ORDERED.

23 Dated: July 22, 2020

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UNITED STATES DISTRICT JUDGE